

NORTHERN ARAPAHO TRIBE OF	:	Order Docketing and Dismissing
THE WIND RIVER RESERVATION,	:	Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 89-81-A
ACTING ASSISTANT SECRETARY -	:	
INDIAN AFFAIRS,	:	
Appellee	:	August 15, 1989

On August 14, 1989, the Board of Indian Appeals received a motion to assume jurisdiction, notice of appeal, and statement of reasons from the Northern Arapaho Tribe of the Wind River Reservation, through counsel, Andrew W. Baldwin, Esq., Fort Washakie, Wyoming. Appellant seeks review of a July 17, 1989, decision of the Acting Assistant Secretary - Indian Affairs concerning appellant's Indian Child Welfare Act (ICWA) grant application.

Appellant's application for an ICWA grant was preliminarily disapproved by the Acting Billings Area Director, Bureau of Indian Affairs, on March 28, 1989. Appellant filed a notice of appeal from that decision with the Board pursuant to 25 CFR Part 2, 54 FR 6478 (Feb. 10, 1989). On April 28, 1989, the Acting Assistant Secretary notified the Board that he had decided to assume jurisdiction over the appeal pursuant to 25 CFR 2.20(c). He rendered a decision in the appeal on July 17, 1989.

Appellant contends that the Board has jurisdiction over this matter under 25 CFR 2.20 because the Acting Assistant Secretary failed to decide the appeal within 60 days after he assumed jurisdiction over it. 25 CFR 2.20(c) requires that, after the Assistant Secretary assumes jurisdiction over an appeal, he must sign a decision "within 60 days after all time for pleadings (including extensions granted) has expired." It is not clear from the materials before the Board whether or not the Acting Assistant Secretary's decision was untimely under 25 CFR 2.20(c) because there is no indication of when the time for pleadings expired. Even if the decision was untimely, however, the Board lacks jurisdiction over this appeal.

25 CFR 2.20(e) provides:

If the Assistant Secretary - Indian Affairs * * * does not make a decision within 60 days after all time for pleadings (including all extensions granted) has expired, any party may move the Board of Indian Appeals to assume jurisdiction subject to 43 CFR 4.337(b). A motion for Board decision under this section shall invest the Board with jurisdiction as of the date the motion is received by the Board.

The Acting Assistant Secretary rendered a decision in this matter before appellant's motion to assume jurisdiction was received by the Board. Decisions of the Acting Assistant Secretary are equivalent to decisions of the Assistant Secretary. See Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168, 90 I.D. 169 (1983). The Assistant Secretary's decisions are final for the Department of the Interior unless he provides otherwise in the decision. 25 CFR 2.6(c), 2.20(c). ^{1/} The Acting Assistant Secretary's decision states that it is final for the Department. The Board has no authority to review it.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the July 17, 1989, decision of the Acting Assistant Secretary - Indian Affairs is dismissed for lack of jurisdiction.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

^{1/} Appellant contends that the Board may review decisions of the Assistant Secretary. The language in 25 CFR 2.20(c) quoted by appellant in support of this contention refers to decisions rendered by a Deputy to the Assistant Secretary. The section clearly provides that decisions of the Assistant Secretary are final.